

MONTANA LEGISLATIVE HISTORY

Chapter 313 19 93

Bill H _____ S 104

Original bill & history ☒ c

H. Committee on Natural Resources
NO COMMITTEE STATUS SHEET

Hearing Date(s) Mar 12 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Mar 15 ☒ C

S. Committee on Natural Resources

Hearing Date(s) Jan 20 ☒ C

Jan 27 ☒ C

_____ ☐ C

_____ ☐ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

SB 102 INTRODUCED BY GAGE, ET AL.

ADOPT UNIFORM DORMANT MINERAL INTERESTS ACT

1/08 INTRODUCED
 1/08 REFERRED TO NATURAL RESOURCES
 1/08 FISCAL NOTE REQUESTED
 1/13 FISCAL NOTE RECEIVED
 1/14 FISCAL NOTE PRINTED
 1/20 HEARING
 1/29 TABLED IN COMMITTEE

SB 103 INTRODUCED BY FRITZ, ET AL.

DECREASE INJURED MUNICIPAL LAW ENFORCEMENT MEMBER BENEFITS

1/08 INTRODUCED
 1/08 FISCAL NOTE REQUESTED
 1/08 REFERRED TO LOCAL GOVERNMENT
 1/13 FISCAL NOTE RECEIVED
 1/15 FISCAL NOTE PRINTED
 1/26 HEARING
 1/29 COMMITTEE REPORT—BILL PASSED AS AMENDED
 1/30 2ND READING PASSED 42 0
 2/01 3RD READING PASSED 47 0

 TRANSMITTED TO HOUSE
 2/02 FIRST READING
 2/02 REFERRED TO LOCAL GOVERNMENT
 3/11 HEARING
 3/12 COMMITTEE REPORT—BILL CONCURRED
 3/17 2ND READING CONCURRED 88 9
 3/19 3RD READING CONCURRED 89 10

 RETURNED TO SENATE
 3/24 SIGNED BY PRESIDENT
 3/26 SIGNED BY SPEAKER
 3/29 TRANSMITTED TO GOVERNOR
 3/31 SIGNED BY GOVERNOR
 CHAPTER NUMBER 251
 EFFECTIVE DATE: 10/01/93

SB 104 INTRODUCED BY GAGE

REVISE OIL AND GAS WELL SPACING AND POOLING LAWS

1/08 INTRODUCED
 1/08 REFERRED TO NATURAL RESOURCES
 1/20 HEARING
 1/28 COMMITTEE REPORT—BILL PASSED
 1/29 2ND READING PASSED 46 1
 1/30 3RD READING PASSED 42 0

 TRANSMITTED TO HOUSE
 2/01 FIRST READING
 2/01 REFERRED TO NATURAL RESOURCES
 3/12 HEARING
 3/15 COMMITTEE REPORT—BILL CONCURRED
 3/27 2ND READING CONCURRED 85 6
 3/30 3RD READING CONCURRED 87 13

 RETURNED TO SENATE
 4/03 SIGNED BY PRESIDENT
 4/06 SIGNED BY SPEAKER
 4/07 TRANSMITTED TO GOVERNOR

4/12 SIGNED BY GOVERNOR
CHAPTER NUMBER 313
EFFECTIVE DATE: 10/01/93

SB 105 INTRODUCED BY STANG, ET AL.
ELIMINATE LOG HAULER CERTIFICATION

1/08	INTRODUCED		
1/08	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/21	HEARING		
2/04	COMMITTEE REPORT—BILL PASSED		
2/08	2ND READING PASSED	35	11
2/09	3RD READING PASSED	42	8
	TRANSMITTED TO HOUSE		
2/10	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/10	FIRST READING		
3/15	HEARING		
3/19	COMMITTEE REPORT—BILL CONCURRED		
3/29	MOTION FAILED TO NOT CONCUR ON 2ND READING	41	56
3/29	2ND READING CONCURRED	55	42
3/31	3RD READING CONCURRED	66	33
	RETURNED TO SENATE		
4/07	SIGNED BY PRESIDENT		
4/07	SIGNED BY SPEAKER		
4/13	TRANSMITTED TO GOVERNOR		
4/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 364		
	EFFECTIVE DATE: 10/01/93		

SB 106 INTRODUCED BY GAGE
REVISE REFUND OF TAXES BY COUNTY COMMISSIONERS
BY REQUEST OF DEPARTMENT OF REVENUE

1/08	INTRODUCED		
1/08	REFERRED TO LOCAL GOVERNMENT		
1/21	HEARING		
1/22	COMMITTEE REPORT—BILL PASSED		
1/23	2ND READING PASSED	45	0
1/25	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
1/26	FIRST READING		
1/26	REFERRED TO LOCAL GOVERNMENT		
3/09	HEARING		
3/16	TABLED IN COMMITTEE		
4/07	COMMITTEE REPORT—BILL CONCURRED		
4/12	2ND READING CONCURRED	77	21
4/13	3RD READING CONCURRED	78	22
	RETURNED TO SENATE		
4/21	SIGNED BY PRESIDENT		
4/21	SIGNED BY SPEAKER		
4/22	TRANSMITTED TO GOVERNOR		
4/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 539		
	EFFECTIVE DATE: 10/01/93		

SENATE BILL NO. 104

INTRODUCED BY GAGE

IN THE SENATE

JANUARY 8, 1993

INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

FIRST READING.

JANUARY 28, 1993

COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

PRINTING REPORT.

JANUARY 29, 1993

SECOND READING, DO PASS.

JANUARY 30, 1993

ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 42; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 1, 1993

INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

FIRST READING.

MARCH 15, 1993

COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 27, 1993

SECOND READING, CONCURRED IN.

MARCH 30, 1993

THIRD READING, CONCURRED IN.
AYES, 87; NOES, 13.

MARCH 31, 1993

RETURNED TO SENATE.

IN THE SENATE

MARCH 31, 1993

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 104
 2 INTRODUCED BY [Signature]
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW
 5 GOVERNING THE POOLING AND SPACING OF OIL AND GAS WELLS;
 6 PROVIDING FOR TEMPORARY AND PERMANENT SPACING OR POOLING;
 7 PROVIDING FOR RECOVERY OF COSTS; AND AMENDING SECTIONS
 8 82-11-201 AND 82-11-202, MCA."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 **Section 1.** Section 82-11-201, MCA, is amended to read:

12 "82-11-201. Establishment of well spacing units. (1) To
 13 prevent or to assist in preventing waste of oil or gas
 14 prohibited by this chapter, to avoid the drilling of
 15 unnecessary wells, or to protect correlative rights, the
 16 board, upon its own motion or upon application of an
 17 interested person, after hearing, may by order establish:

18 (a) temporary spacing units on a statewide basis or for
 19 defined areas within the state for oil, gas, or oil and gas
 20 wells drilled to varying depths; and

21 (b) permanent well spacing units for a discovered pool
 22 as--to-oil-wells-or-as-to-gas-wells-or-both, except in those
 23 pools which that, prior to April 1, 1953, have been
 24 developed to such an extent that it would be impracticable
 25 or unreasonable to establish spacing units at the existing

1 stage of development. ~~Spacing-units-when--established--shall~~
 2 ~~insofar--as--possible--be--of-uniform-size-and-shape-for-the~~
 3 ~~entire-pool.~~

4 (2) The size and the shape of temporary spacing units
 5 ~~shall~~ must be ~~such--as--will--result-in-the-efficient-and~~
 6 ~~economic established to promote the orderly development of~~
 7 ~~the--pool--as-a-whole,-and-the-size-shall~~ unproven areas and
 8 must be uniform throughout the surface area that--can--be
 9 efficiently--drained--by--one-well and depths covered by the
 10 unit. A temporary spacing unit must remain in effect until
 11 superseded by an order issued by the board or until a
 12 permanent spacing unit is established.

13 (3) Permanent spacing units do not need to be uniform
 14 in size or shape but must result in the efficient and
 15 economic development of the pool as a whole. In establishing
 16 permanent spacing units, the acreage to be embraced within a
 17 unit and the shape of the unit must be determined by the
 18 board based upon evidence introduced at the hearing. The
 19 board may divide a pool into zones and establish spacing
 20 units for each zone if necessary for a purpose mentioned in
 21 subsection (1) or to facilitate production through the use
 22 of innovative drilling and completion methods. The spacing
 23 units within the zone may differ in size and shape from
 24 spacing units in any other zone but may not be smaller than
 25 the maximum area that can be efficiently and economically

1 drained by one well.

2 ~~{3}~~(4) Subject---to---this---chapter,---the An order
3 establishing temporary or permanent spacing units shall
4 direct--that-no-more-than may permit only one well may to be
5 drilled and produced from the common source of supply on any
6 spacing unit, and that the well shall must be drilled at a
7 location authorized by the order, with such an exception as
8 may be reasonably necessary, where--it--is--shown, The
9 exception may be included if, upon application, notice, and
10 hearing, and the board finds that the spacing unit is
11 located on the edge of a pool or field and adjacent to a
12 producing unit or, for some other reason, that the
13 requirement to drill the well at the authorized location on
14 the spacing unit would be inequitable or unreasonable. The
15 board shall take action to offset any advantage that the
16 person securing the exception may have over other producers
17 by reason of drilling the well as an exception. The order
18 must include provisions to prevent production from the
19 spacing unit from being more than its just and equitable
20 share of the producible oil and gas in the pool.

21 ~~{4}~~(5) An order establishing temporary or permanent
22 spacing units for a pool shall must cover all lands then
23 determined or then believed to be underlaid by the pool and
24 may be modified after notice and hearing by the board from
25 time--to--time to include additional areas subsequently

1 determined to be underlaid by the pool.

2 ~~(6)~~ When-found-necessary-for-the-prevention--of--waste,
3 an--order--establishing--spacing--units--in--a--pool--may-be
4 modified-after The board, upon application, notice, and
5 hearing, by--the-board-to may increase or decrease the size
6 of a temporary or permanent spacing units--in-the--pool unit
7 or to permit the drilling of additional wells in the--pool--on
8 a--reasonably--uniform--plan a spacing unit for a purpose
9 mentioned in subsection (1)."

10 **Section 2.** Section 82-11-202, MCA, is amended to read:

11 **"82-11-202. Pooling of interest within spacing unit.**
12 (1) (a) When two or more separately owned tracts are
13 embraced within a temporary or permanent spacing unit or
14 when there are separately owned interests in all or a part
15 of the spacing unit, then the persons owning those interests
16 may pool their interests for the development and operation
17 of the spacing unit.

18 (b) In-the-absence--of--voluntary--pooling--within--the
19 spacing--unit,--the The board, upon the application of an
20 interested person, may enter an order pooling all interests
21 in the permanent spacing unit for the development and
22 operation thereof of the permanent spacing unit and the
23 allocation of production if the applicant has made an
24 unsuccessful, good faith attempt to voluntarily pool the
25 interests within the permanent spacing unit. The applicant

1 must be a person who owns an interest in the oil or gas
 2 underlying the permanent spacing unit or who has drilled a
 3 well, proposes to drill a well, or proposes to conduct other
 4 operations on a well, including recompleting, deepening, or
 5 stimulation. The pooling order ~~shall~~ must be made after a
 6 hearing and ~~shall~~ must be upon terms and conditions that are
 7 just and reasonable and that afford to the owner of each
 8 tract or interest in the permanent spacing unit the
 9 opportunity to recover or receive without unnecessary
 10 expense ~~his~~ a just and equitable share of the oil or gas
 11 produced and saved from the spacing unit. Operations
 12 incident to the drilling of a well upon any portion of a
 13 permanent spacing unit covered by a pooling order ~~shall--be~~
 14 are considered, for all purposes, the conduct of the
 15 operations upon each separately owned tract in the spacing
 16 unit by the several owners ~~thereof~~ of the tracts. That
 17 portion of the production allocated to each tract included
 18 in a permanent spacing unit covered by a pooling order ~~shall~~
 19 must when produced be considered for all purposes to have
 20 been produced from the tract by a well drilled ~~thereon~~ on
 21 the tract.

22 (2) (a) ~~The--pooling--order--shall--provide---for---the~~
 23 ~~drilling-and-operating-of-a-well-on-the-spacing-unit-and-for~~
 24 ~~the--payment--of--the-cost--thereof,--which--cost--may--include--a~~
 25 ~~reasonable-charge-for-supervision,--handling,--and-storage.~~ As

1 to each owner who refuses to pay ~~his~~ the owner's share of
 2 the costs of ~~drilling-and-operating-the-well~~ development or
 3 other operations referred to in subsection (1), the order
 4 ~~shall~~ must provide for payment of ~~his~~ the owner's share of
 5 the cost out of and only out of production from the well
 6 allocable to ~~his~~ the owner's interest in the permanent
 7 spacing unit, excluding royalty or other interest not
 8 obligated to pay any part of the cost ~~thereof,~~ and excluding
 9 the royalty provided for in subsection (2)(c) ~~of--this~~
 10 section. If a well has not been drilled prior to the hearing
 11 on the application, the pooling order must provide for the
 12 drilling and operating of a well on the permanent spacing
 13 unit and for the payment of the cost of the well, which may
 14 include a reasonable charge for supervision, handling, and
 15 storage. If a dispute arises as to the cost, the board by
 16 subsequent order, after notice and hearing, shall determine
 17 the proper cost. The order may provide in substance that the
 18 owners who agree to share in the cost of drilling and
 19 operating the well are, unless they agree otherwise,
 20 entitled to receive, subject to royalty or similar
 21 obligations, all of the production of the well until they
 22 have recovered all of the costs out of the production, ~~and~~
 23 thereafter After all costs of drilling and operation are
 24 recovered, all of the owners in the permanent spacing unit
 25 are entitled to receive their respective shares of the

1 production of the well as their interest may appear after
2 deducting their respective shares of current operating
3 costs.

4 (b) If a well has been drilled prior to the hearing on
5 the application and an owner refuses, after written demand,
6 has failed or refused to pay his the owner's share of the
7 costs of drilling-and--operating--the--well development or
8 other operations referred to in subsection (1), or if a well
9 has not been drilled prior to the hearing on the application
10 and an owner refuses to agree to pay the owner's share of
11 drilling and completion costs, in addition to the costs
12 under subsection (2)(a), the order must include as cost
13 costs:

14 (i) 100% of the refusing owner's share of the cost of
15 newly acquired surface equipment beyond the wellhead
16 connections, including but not limited to stock tanks,
17 separators, treaters, pumping equipment, and piping, plus
18 100% of the refusing owner's share of the cost of operation
19 of the well commencing with first production and continuing
20 until the agreeing owners have recovered such the costs; and

21 (ii) 200% of the refusing owner's share of the costs and
22 expenses of staking, well site preparation, obtaining
23 rights-of-way, rigging up, drilling, reworking, deepening or
24 plugging back, testing, and completing the well, after
25 deducting any cash contributions received from the refusing

1 owners by the agreeing owners, and 200% of that portion of
2 the cost of equipment in the well, including the wellhead
3 connections.

4 (c) A refusing owner of an oil and gas interest in a
5 spacing unit which that is not subject to any lease or other
6 contract for development of oil and gas is considered to own
7 a landowner royalty equal to one-eighth of his the owner's
8 proportionate share of production from the well until such
9 time as the consenting owners recover the costs specified in
10 subsection (2)(b). Any interest in production from the
11 spacing unit to which the interest of the refusing owner may
12 be subject must be deducted from the royalty considered to
13 be owned by the refusing owner. After costs have been
14 recovered by the agreeing owners, the refusing owner owns
15 his the refusing owner's proportionate share of the well,
16 surface facilities, and production and is liable for further
17 costs as if he the refusing owner had originally agreed to
18 drilling of the well.

19 (d) The operator of a well under a pooling order in
20 which there is a refusing owner shall upon demand furnish
21 such the refusing owner with a monthly statement of all
22 costs incurred, together with the quantity of oil or gas
23 produced and the amount of proceeds realized from the sale
24 of production during the preceding month.

25 (e) If an owner of an oil and gas interest in a

1 temporary spacing unit refuses to agree to pay the owner's
2 share of the costs of drilling and operating a well drilled
3 within the unit and an application is filed for pooling of
4 the interests in the well in a permanent spacing unit, the
5 board shall, upon hearing the application for pooling of the
6 interests for the well, order that the parties who agreed to
7 share in the cost of drilling and operating the well prior
8 to commencement of the drilling operation recover out of the
9 refusing owner's share of the costs as provided in
10 subsections (2)(a) and (2)(b).

11 (3) (a) An owner is presumed to have refused to pay the
12 owner's share of costs if prior to the spud date of the
13 well, the owner fails to pay or agree in writing to promptly
14 pay the share of the costs after notice by the well operator
15 either:

16 (i) acknowledged in writing by the owner as received;
17 or

18 (ii) sent at least 30 days prior to the spud date of the
19 well to the owner by certified mail, addressed to the
20 owner's address of record in the office of the clerk and
21 recorder of the county where the well is to be drilled or to
22 the owner's address on file with the board.

23 (b) The notice must set forth the location of the well,
24 the projected depth and target formations, the anticipated
25 costs of drilling and completing the well, and the

1 anticipated spud date of the well."

-End-

COMMITTEE--SENATE NATURAL RESOURCES

Page 4

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ----- DATE READ

SB0060	DEVLIN, GERRY	12/23	1/15	PROHIBIT WEATHER MODIFICATION AND CONTROL; PROVIDE PENALTY	TABLED ON 02/05	
SB0067	YELLOWTAIL, BILL	1/02	1/08	1/11	SOLID WASTE HOUSEKEEPING BILL	DO PASS 1/13 1/14
SB0072	DEVLIN, GERRY	1/02	1/15	REVISE ATMOSPHERIC WEATHER MODIFICATION APPLICATION & PERMIT PROCESSES	PASS AS AMENDED 2/5	2/06
SB0097	HERTEL, JOHN	1/07	1/11	CANAL PRIVATIZATION PROGRAM AMENDMENT	DO PASS 1/13	1/14
SB0102	GAGE, DEL	1/08	1/20	2/10	UNIFORM DORMANT MINERAL INTEREST ACT	TABLED ON 01/29
SB0104	GAGE, DEL	1/08	1/20	REVISE OIL AND GAS SPACING AND POOLING LAWS	DO PASS 1/17	1/28
SB0128	BURNETT, JIM	1/12	1/20	WATER USE PERMIT OBJECTION FEES LIMITATION	TABLED ON 01/29	
SB0158	REA, JACK	1/15	1/25	PROHIBITION ON USE OF AND LABELING REQUIRED FOR CERTAIN TYPES OF CEMENT	TABLED ON 02/10	
SB0171	HALLIGAN, MIKE	1/16	1/27	2/5	CLARIFY CONFIDENTIAL MINING PERMIT APPLICATION MATERIAL	PASS AS AMENDED 2/13 2/15
SB0172	DEVLIN, GERRY	1/16	2/05	REVISING THE EXCEPTIONS TO THE GROUND WATER PERMIT REQUIREMENTS	PASS AS AMENDED 2/9	2/10
SB0196	DEVLIN, GERRY	1/19	1/27	2/5	1,100 GALLON UNDERGROUND STORAGE TANK EXEMPTION	PASS AS AMENDED 2/9 2/10
SB0214	WELDON, JEFF	1/20	2/01	PROHIBIT VANDALIZING OF CAVES, PROVIDE PENALTY	PASS AS AMENDED 2/5	2/08

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on January 20, 1993, at 1:00 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)
Sen. Cecil Weeding, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Lorents Grosfield (R)
Sen. Bob Hockett (D)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Jeff Weldon (D)

Members Excused: None.

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 102, SB 104, SB 128
Executive Action: None.

Announcements/Discussion:

Chair Bianchi announced that Montanans Against Toxic Burning and the Montana Environmental Information Center would be presenting their perspective on hazardous waste burning on 1/22. Chair Bianchi added that a presentation by realtors and surveyors on the subdivision issue was also scheduled for 1/22.

Chair Bianchi announced on 1/25, the Committee would take executive action on the five bills the Committee has heard and not acted upon.

HEARING ON SB 104

Opening Statement by Sponsor:

Sen. Gage said the purpose of SB 104 is to expand upon legislation previously passed regarding pooling and spacing agreements. He said pooling and spacing rules exist for the purpose of oil and gas conservation. SB 104 deals with temporary spacing and pooling of interests.

Proponents' Testimony:

Tom Richmond, Administrator and Petroleum Engineer for the Board of Oil and Gas Conservation, said SB 104 makes substantial changes to the statute the Board enforces. He added the Board appreciates the efforts to clean up some of the language and "kill some of the dinosaurs" that have been in the statutes for 30 years.

Kemp Wilson, representing the Norfolk Energy Company, said he drafted the proposed changes to the statutes and described his background. Mr. Wilson said the Montana Conservation Act, passed in 1953, contained spacing and pooling provisions which have remained unchanged since that time. The 1985 legislature adopted a risk penalty provision to assist those who risked drilling wells when others were recalcitrant. Mr. Wilson said the proposed changes would create the concept of temporary well spacing units, which are the statewide units the Board of Oil and Gas Conservation has adopted. Mr. Wilson said many of SB 104's provisions are intended to modernize Montana's spacing and pooling statutes. Mr. Wilson distributed an outline of a presentation to the Board of Oil and Gas explaining proposed changes to spacing and pooling statutes (Exhibit #1).

Janelle Fallan, Executive Director, Montana Petroleum Association, said SB 104 provides necessary clarity in the law and provides for more fairness and equity for the mineral owner. She asked the Committee to approve the legislation.

Doug Ablin, representing the Northern Montana Oil and Gas Association expressed his support for SB 104.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Mr. Wilson said SB 104 would not affect an individual's rights granted under an oil and gas lease. He said the bill does not change the requirement that any attempt to drill two wells in a

12

spacing unit will require special consideration by the Board of Oil and Gas Conservation. Mr. Wilson discussed the problems with wildcat wells. He said Montana would be the first state to allow the imposition of risk sharing penalties for wildcat wells. Mr. Wilson discussed the Board's role in adjudicating disputes.

Closing by Sponsor:

Sen. Gage said SB 104 has the potential of helping conservation and drilling activity in Montana.

HEARING ON SB 128

Opening Statement by Sponsor:

Sen. Burnett said SB 128 enters into statute a fee for water right objections not to exceed \$15.

Proponents' Testimony:

Jo Brunner, Executive Director, Montana Water Resources Association (MWRA), described a situation in the Bitterroot Valley in which there are many changes of diversion, changes of use and objections filed on a particular stream. She said MWRA supports SB 128.

Gary Fritz, Administrator, Department of Natural Resources and Conservation (DNRC) Water Resources Division, submitted written testimony expressing DNRC's support for SB 128 (Exhibit #2), and suggesting an amendment. Mr. Fritz discussed the authority of the Board of Natural Resources and Conservation to assess fees in order to compensate for budget cuts.

Stan Bradshaw, representing Montana Trout Unlimited, said he echoes DNRC's testimony. He said many people have been worried that low objection fees would result in frivolous water rights objections to disrupt the water allocation system. Mr. Bradshaw said the Board should have the latitude to set fees at a rate that would prevent such frivolous objections.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

The Committee discussed with Don McIntyre, DNRC Legal Counsel, the Board Natural Resources and Conservation's authority to adopt rules and establish fees. Mr. McIntyre said SB 128 does not

PROPOSED CHANGES TO MONTANA'S
SPACING AND POOLING STATUTES

I. SPACING STATUTE [82-11-201]

A. Concept of "temporary" and "permanent" spacing units used to enable imposition of non-joinder penalties in wildcat well ventures

1. Present statute and state-wide well location rule interpretation do not allow non-joinder penalties to be imposed unless forced pooling hearing held prior to drilling of well.

2. Proposed changes intended to make it clear by statute that MBOGC state-wide rules are spacing rules. The proposed changes specifically allow for drilling before hearing as to both wildcat and development wells, with the imposition of penalties to be ordered upon evidence that the refusing owner was given an opportunity to join prior to drilling.

B. Concept of "temporary" and "permanent" spacing units will eliminate inequity of production from wildcat considered as property of owner under the well via the rule of capture for the period from well completion to the date of spacing order.

1. Under the "temporary spacing unit" concept, production would be shared from date of first runs by at least a good portion of the owners who would ultimately be within a permanent unit.

C. Proposed changes intended to give Board maximum flexibility in the creation of spacing units, and recognize that thin discontinuous formations and/or fractured formations do not lend themselves to units of "uniform size and shape," on a field-wide basis.

D. Proposed changes intended to allow Board to deal with technical advances in drilling and completion techniques in determining proper spacing units (i.e., horizontal wells or stimulation techniques that enhance possible areal extent of drainage).

E. Proposed change (subparagraph 6) would allow the Board to consider downspacing or infill well applications on less than a field-wide basis in order to prevent waste or protect correlative rights. This will give stronger and more uniform effect to the Board's past, and somewhat inconsistent, practice of allowing additional wells in faulted areas.

F. Express recognition of Board's duty to consider

EXHIBIT NO. 1

DATE 1/20
1974

protection of correlative rights.

II. POOLING STATUTE [82-11-202]

A. Non-joinder penalties expanded to include not only failure to join in drilling, but also post-completion operations, such as reworking and deepening.

B. Costs defined to include reasonable charge for supervision and overhead (Schaenen and Courtney suggestions).

C. Board's pooling authority remains limited to only permanent spacing units.

1. Non-joinder penalties applied to wildcat wells only after owner has received written notice by certified mail 30 days in advance of spudding well, and will not agree in writing to pay his share of well costs. Board order imposing penalties can only be entered after permanent spacing is established by Board (thus fixing the refusing owner's interest in the spacing unit for purpose of determining proper share of costs upon which penalties are to be based).

D. Notice provision added to insure that penalties only assessed in those situations where information sufficient to provide basis for decision whether or not to join has been given in writing to interest owners.

DATE 1/20

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 102, SB 104, SB 128

Name	Representing	Bill No.	Check One	
			Support	Oppose
Robert E. Sullivan	UNIFORM Laws Comm.	102	☒	☐
Janelle Fallon	MT Petroleum	102	☐	☒
"	"	104	☒	☐
Wesley Dickens	Keep MT Clean + Beautiful	102	☐	☐
Greg Stander	MT Power Co	104	☐	☐
Lerna Frank	MT. Farm Bureau	102	☒	☐
Giles Gregoire	Mont. Land + ^{Assoc} Miners' Owners	102	☒	☐
Ken Wilson	Norfolk Energy Co.	104	☒	☐
Jo Brunner	MARA	128	☒	☐
Tom Hopwood	Mt. Assoc. Realtors	102	☐	☒
Stan Bradshaw	M.T.U.	128	☒	☐
TOM RICHMOND	MT BOARD OF OIL & GAS	104	☒	☐

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on January 27, 1993, at 1:00 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)
Sen. Cecil Weeding, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Lorents Grosfield (R)
Sen. Bob Hockett (D)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Jeff Weldon (D)

Members Excused: None.

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 171, SB 196
Executive Action: SB 104

HEARING ON SB 171

Opening Statement by Sponsor:

Sen. Halligan, SD 29, said code commissioners apprise the legislature of statutes that have been declared unconstitutional. He said SB 171 is a code commissioner referral from Greg Petesch to deal with the statute 82-4-306. Sen. Halligan stated an exploration license from the Department of State Lands (DSL) is required of anyone who explores for a mineral. Sen. Halligan added under the old statute, there is a blanket confidentiality

the bill to mirror constitutional language. Sen. Halligan added proprietary information is rarely in the application for exploration, but constitutional language must be enforced in the event that there is such information.

EXECUTIVE ACTION ON SB 104

Motion/Vote: Sen. Keating MOVED SB 104 DO PASS. The motion CARRIED UNANIMOUSLY.

HEARING ON SB 196

Opening Statement by Sponsor:

Sen. Devlin said the federal Underground Storage Act did not include provisions for non-commercial tanks 1,100 gallons or less, so Montana placed state regulations on the tanks. Sen. Devlin stated people have to "jump through hoops" to remove underground tanks even if they are not leaking. He added that if a tank is not leaking the Department of Health and Environmental Sciences (DHES) should "cover the hole and be glad it's out of the ground".

Informational Testimony:

Jean Riley, executive director, Petroleum Tank Release Compensation Board, submitted written testimony (Exhibit #1).

John Geach, Underground Storage Tank Section Supervisor, DHES, also submitted a written copy of his testimony (Exhibit #2).

Proponents' Testimony:

Leonard Lundby, a farmer/rancher from Great Falls said underground storage tank laws impact him heavily, as he has 3 tanks. One of his tanks (a 500 gallon heating oil tank) is above ground, but has pipes underground, so it is classified as an underground tank. Mr. Lundby said he feels regulations have gone too far, and are cost prohibitive. He said that during the energy crisis in the 1970s, tank owners were encouraged to bury tanks underground to avoid evaporation. He added owners are digging up tanks because monitoring required by the regulations is expensive. Mr. Lundby said the last legislature took \$225,000 from the Underground Storage Tank Release Fund and placed it in the general fund to help balance the budget. He said there is currently little money left in the fund.

Dave McClure, representing the Montana Farm Bureau, read the organization's policy statement recommending that Montana underground storage tank laws be amended to conform to Environmental Protection Agency (EPA) rules concerning tanks with

ROLL CALL

SENATE COMMITTEE Natural Resources

DATE 1/27

NAME	PRESENT	ABSENT	EXCUSED
Sen. Bianchi	X		
Sen. Hockett	X		
Sen. Bartlett	X		
Sen. Doherty	X		
Sen. Grosfield	X		
Sen. Keating	X		
Sen. Kennedy	X		
Sen. McCernan	X		
Sen. Swift	X		
Sen. Swysgood	X		
Sen. Treit	X		
Sen. Weeding	X		
Sen. Weldon	X		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 27, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 104 (first reading copy -- white), respectfully report that Senate Bill No. 104 do pass.

Signed:

Don Bianchi
Senator Don Bianchi, Chair

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN DICK KNOX, on March 12, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 261, SB 104 and SB 171
Executive Action: SB 104, SB 231, SJR 24

HEARING ON SB 261

Opening Statement by Sponsor:

SEN. STEVE DOHERTY, SD 20, Great Falls, presented SB 261 which revises Montana Subdivision law. The bill defines minor subdivisions which are five or fewer acre parcels and differs, therefore, from REP. FAGG'S bill, HB 408. SB 261 removes both the 20 acre exemption and the occasional sale.

Candance Torgerson, on behalf of the Montana Stockgrower's Association, said that unless significant amendments are adopted, the Association will not support SB 261.

John Willard, Billings, said private property rights should be protected by law. The subdivision review process needs to be simple and concise.

Lorna Frank, Montana Farm Bureau, said they have concern for property rights. The Bureau supports SB 280 over SB 261.

Doug Olson, lobbyist, Paradise Valley Coalition, said SB 261 changes the definition of what constitutes a subdivision.
EXHIBIT 3

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. DOHERTY said he would like to urge the committee to read the Leach decision. EXHIBIT 4 The push is on for subdivision reform and the time is now.

HEARING ON SB 104

Opening Statement by Sponsor:

SEN. DELWYN GAGE, SD 5 Cut Bank, said SB 104 was presented at the request of Billings area residents. As a sound conservation bill, it will further the oil and gas conservation effort.

Proponents' Testimony:

Kemp Wilson, on behalf of Norfolk Energy, Billings, said the many changes proposed within SB 104 give the Montana Oil and Gas Board needed flexibility and leeway. Montana needs this legislation.

Janelle Fallan, Montana Petroleum Association, noted that well spacing is no longer done in Montana, as it wastes resources.
EXHIBIT 6

D. Rickman, Montana Board of Oil and Gas, said they support SB 104.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. HARPER asked Ms. Rickman if the industry will support SB 104. Ms. Rickman replied that the oil and gas industry does support the bill.

Closing by Sponsor:

SEN. GAGE said that SB 104 is a good conservation bill that may stimulate economic activity in Montana.

HEARING ON SB 171

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, Missoula, said HB 171 is designed to clarify confidential mining permit applications. SB 171 weighs and balances the public's right to know through a district court decision.

Proponents' Testimony:

Jim Jensen, MEIC, submitted the court's decision Cause No. CDV-92-010 MEIC, vs. Montana Department of State Lands (DSL) and the Montana Mining Association. EXHIBIT 6

Dennis Olson, Northern Plains Resource Council, testified in support of SB 171.

Opponents' Testimony:

John Fitzpatrick, on behalf of Pegasus Gold, said the bill, as written, leaves statutes regarding geology too open.

Questions From Committee Members and Responses:

REP. FELAND asked Mr. Fitzpatrick what type of information is not included in SB 171. Mr. Fitzpatrick replied a record of the assay of materials is omitted.

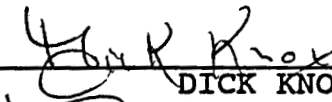
REP. RANEY asked SEN. HALLIGAN if the bill opens to review proposed geological information. SEN. HALLIGAN stated that as the bill is currently written, the public has access to all information. He urged the committee to table the bill rather than allow the court case to stand.

EXECUTIVE ACTION ON SB 104

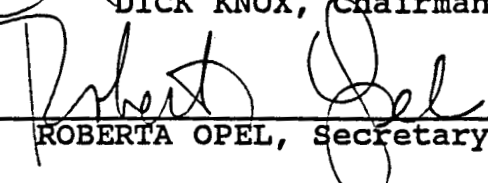
Motion/Vote: REP. RANEY MOVED SB 104 BE CONCURRED IN. Motion carried unanimously.

ADJOURNMENT

Adjournment: 7:05 p.m.



DICK KNOX, Chairman



ROBERTA OPEL, Secretary

DK/ro

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

NATURAL RESOURCES

COMMITTEE

BILL NO.

SB 104

DATE 3/12/93

SPONSOR (8)

RED. GATGE

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

[illegible]

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

The regulation of the number and location of wells over an oil or gas reservoir, as a conservation measure.

It is generally agreed today that increased recovery from a reservoir is not a function of the number of wells drilled. Thus to the extent that more wells are drilled than are necessary for maximum re-

covery, there is economic waste, since the cost of drilling the unnecessary wells need not have been incurred. It has been estimated by Mr. R.E. Hardwicke that over \$100 million was spent annually in Texas in the period 1947-1952 for drilling, equipping and operating unnecessary wells. See 31 *Texas L. Rev.* 99 at 111 (1952).

In addition to curbing such waste, well spacing also prevents injury to the reservoir. Excessive rates of withdrawal from a reservoir, particularly where the rate in one section of the field is disproportionate to that in another, can result in physical waste from irregular or premature water or gas encroachment. Well spacing, based on a uniform pattern (such as one well to 40 acres), will inhibit such physical waste by making unnecessary disproportionate withdrawals. See American Petroleum Institute, *Standards of Allocation of Oil Production* 27-30 (1942); Hardwicke, *supra*, 31 *Tex. L. Rev.* 99 (1952).

Well spacing is normally accomplished by order of the regulatory conservation commission. The order may be statewide in its application (subject to change for local conditions) or it may be entered for each field after its discovery. Some well spacing orders divide up the field into spacing units, using the grid system of the U.S. General Land Office Survey. Thus an order might prohibit the drilling of more than one well in each quarter, quarter section. Another system is to prohibit the drilling of a well closer than x feet from another well or closer than y feet to any surface boundary line. This is the method used in the Texas spacing rule, RULE 37 (q.v.).

The problem then arises of what to do with tracts of land smaller than those upon which drilling is permitted under the order. In general, two solutions have been adopted. The first is to permit drilling on such undersized tracts as an exception to the rule. This solution seriously impairs the value of well spacing, for it allows the evils to arise that uniform spacing would prevent. But it removes the spacing rule from the jeopardy of unconstitutionality, since with the granting of exceptions the rule does not deprive the land owner of the opportunity to produce the oil beneath his undersized tract. This is the well-spacing system in Texas [see RULE 37].

However, uniform spacing can be achieved without allowing exceptions and without depriving the landowner of a chance to recover his oil. This is accomplished by COMPULSORY POOLING (q.v.), whereby the regulatory agency combines small tracts into sufficient area to meet the standard of the well spacing order. To take a single example, if the spacing order calls for 40-acre drilling units, the owners of two twenty acre tracts would be required to combine their land to form one drilling unit. Usually, the landowners share production on the basis of surface acreage, but other forms may

used, such as acre feet of producing sand. The constitutionality of compulsory pooling statutes has been uniformly upheld. See *TREATISE* Ch. 9.

The development of well spacing and compulsory pooling in Oklahoma is discussed in Dancy and Dancy, "Regulation of the Oil and Gas Industry by the Oklahoma Corporation Commission," 21 *Tulsa L.J.* 613 (1986).

The development of well spacing legislation in the United States and Canada is traced in Harrison, "Regulation of Well Spacing in Oil and Gas Production," 8 *Alberta L. Rev.* 357 (1970).

Under appropriate circumstances, a regulatory commission may de-space existing drilling units and create new drilling units of a different size. See *El Paso Natural Gas Co. v. Corporation Commission*, 640 P.2d 1336, 72 O.&G.R. 93 (Okla. 1982) (finding that sufficient evidence was presented to the Commission to hold a substantial change of knowledge of conditions existed which authorized a change in spacing from 1,440 acres to 640 acres. One of the several factors considered by the Commission was the economic circumstances of a dramatic increase in gas prices in the period since the spacing was originally ordered.).

Kuykendall v. Corporation Comm'n, 634 P.2d 711, 71 O.&G.R. 364 (Okla. 1981), sustained a Commission order establishing 1,440-acre drilling and spacing units, concluding that it was permissible for the Commission to consider general economic conditions such as an increase in the price of gas which effect financial inducements to drill and develop a common source of supply as included within the kaleidoscope of "waste."

Anderson, "Compulsory Pooling in North Dakota: Should Production Income and Expenses Be Divided from Date of Pooling, Spacing, or 'First Run'?" 58 *No. Dak. L. Rev.* 537 at 573 (1982), argues that "a well spacing order should be retroactive to the date of first production and a compulsory pooling order should be retroactive to the effective date of spacing."

For a case giving retroactive operation to a compulsory pooling order, see *Murphy v. Amoco Production Co.*, 590 F.Supp. 455, 83 O.&G.R. 108 (D.

See also *Dow*
SPACING UNIT; S
AREA.

MONTANA PETROLEUM ASSOCIATION

A Division of the
Rocky Mountain Oil and Gas Association

Janelle K. Fallan
Executive Director

Well stimulat

See *STIMULATE*

OUR NEW ADDRESS

33 So. Last Chance Gulch, #2B
P.O. Box 1186, Helena, MT 59624
Telephone: 406/442-7582

F. 11/6/4 1991



EXHIBIT 5
DATE 3-12-93
IB 261

Best Copy
of
Original

EXHIBIT 6
DATE 3-12-93
HB 171

CLERK OF DISTRICT COURT

SEP 23 8 06 AM '92

FILED CINDY EVENSON
BY _____

MONTANA FIRST JUDICIAL DISTRICT COURT
COUNTY OF LEWIS AND CLARK

* * * * *

MONTANA ENVIRONMENTAL INFORMATION
CENTER, a Montana non-profit
corporation, and THE MONTANA
FREEDOM OF INFORMATION HOTLINE,
INC., a Montana non-profit
corporation,

Plaintiffs,

vs.

MONTANA DEPARTMENT OF STATE LANDS,
a Department of the State of
Montana,

Defendant,

and

THE MONTANA MINING ASSOCIATION,

Intervenor-Defendant.

* * * * *

Cause No. CDV-92-020

MEMORANDUM AND ORDER

The issue before the Court is whether Section 82-4-
306, MCA, is unconstitutional because it violates Article II,

1 Section 9, of the Montana Constitution. The issue has been
2 fully briefed and is ready for decision.

3 BACKGROUND

4 On November 25, 1991, James Jensen, executive director
5 of the Montana Environmental Information Center (MEIC), wrote
6 Sandy Olsen, chief of the Hard Rock Bureau of the Montana
7 Department of State Lands (DSL), requesting information about
8 four exploration licenses issued by DSL for mining exploration
9 on private land. In his letter Jensen stated that he was
10 especially interested in any restrictions or requirements,
11 including performance bonds, which might have been placed on the
12 licensees relating to hazardous materials management, air and
13 water quality protection and reclamation. He also requested a
14 copy of the environmental assessment DSL had prepared on the
15 exploration permit for the Montanore project, a large explora-
16 tion tunnelling project adjacent to and beneath the Cabinet
17 Mountains Wilderness Area.

18 Relying on the provisions of Section 82-4-306, MCA,
19 Olsen wrote Jensen on November 26, 1991, stating that she could
20 not approve his request to look at specific exploration files
21 concerning private lands. Also on November 26, 1991, Jensen
22 received a press release from Noranda Minerals Corp., owner of
23 the Montanore project, stating that Noranda was interrupting its
24 exploration tunnelling activities at the Montanore project in
25

1 response to an "advisory issued by the Montana Department of
2 State Lands requiring that Noranda Minerals initiate immediate
3 action to reduce nitrate levels in the water of Libby Creek."

4 Plaintiffs filed this action on January 6, 1992. On
5 January 9, 1992, Noranda Minerals' project director for the
6 Montanore project wrote DSL and gave DSL a partial waiver of
7 confidentiality as to the Montanore project. The letter stated
8 that the file does not contain proprietary geological
9 information.

10 DISCUSSION

11 Section 82-4-331(1), MCA, provides that no one may
12 engage in exploration without first obtaining an exploration
13 license from DSL. Under Section 82-4-332, MCA, an application
14 must "include an exploration map or sketch in sufficient detail
15 to locate the area to be explored and to determine whether
16 significant environmental problems would be encountered." The
17 applicant must also submit a plan of operation which provides a
18 detailed description of the proposed exploration activities; a
19 description of the environment potentially affected by the
20 exploration activities; and a reclamation plan.

21 After DSL determines that an application is complete,
22 it evaluates the information submitted; does a site inspection;
23 and prepares an environmental assessment. As part of its
24 review, DSL determines whether conditions should be placed on a
25

1 license. Also, a reclamation bond needs to be posted prior to
2 issuance of any exploration license. After a license has been
3 issued, DSL monitors the licensee to insure compliance with the
4 license requirements and state laws. As part of the monitoring
5 process, the licensee may be required to submit periodic reports
6 to DSL. If it appears that a licensee is not in compliance with
7 its license, DSL may issue a notice of non-compliance and order
8 the licensee to take corrective action. DSL's file on a partic-
9 ular license may contain correspondence, notes from telephone
10 calls and meetings and citizens' complaints.

11 Section 82-4-306, MCA, provides:

12 Confidentiality of application
13 information. (1) Except as provided in
14 subsections (2) and (3), any information
15 obtained by the board or by the director or
16 his staff by virtue of applications for
17 exploration licenses and all information
18 obtained from small miners is confidential
19 between the board and the applicant, except
as to the name of the applicant and the
county of proposed operation; provided that
all activities conducted subsequent to ex-
ploration and other associated facilities
shall be public information and conducted
under an operating permit.

20 (2) Any information referenced in sub-
21 section (1) is properly admissible in any
22 hearing conducted by the director, the
23 board, appeals board, or in any judicial
24 proceeding to which the director and the
applicant are parties and is not confiden-
tial when a violation of this part or rules
adopted under this part has been determined
by the department or by judicial order.

25 (3) The department may disclose

1 information obtained by the board, the
2 commissioner, or department staff from
3 exploration license applications and from
4 small miners for exploration or mining on
5 state and federal lands that identifies the
6 location of exploration and mining
7 activities and that describes the surface
8 disturbance that is occurring or projected
9 to occur. The department may not disclose a
10 licensee's or small miner's proprietary
11 geological information.

12 (4) Failure to comply with the secrecy
13 provisions of this part is punishable by a
14 fine of up to \$1,000. (Emphasis supplied.)

15 Plaintiffs contend that this statute, which requires
16 DSL to keep confidential all information obtained by it from
17 applicants for exploratory licenses or from small miners,
18 irreconcilably conflicts with Article II, Section 9, of the
19 Montana Constitution which provides:

20 Right to know. No person shall be
21 deprived of the right to examine documents
22 or to observe the deliberations of all
23 public bodies or agencies of state govern-
24 ment and its subdivisions, except in cases
25 in which the demand of individual privacy
clearly exceeds the merits of public
disclosure.

26 The Montana Supreme Court has developed a two-part
27 balancing test to determine whether a person has a constitu-
28 tionally protected privacy interest. Montana Human Rights Div.
29 v. City of Billings, 199 Mont. 434, 442, 649 P.2d 1283, 1287
30 (1982). First, there must be a determination as to whether a
31 person has a subjective or actual expectation of privacy. The
32 second part of the test is a determination of whether society

1 would recognize that expectation as reasonable. In applying the
2 test to the Montana Open Meeting Act, the court stated:

3 However, the right to know is not
4 absolute. The more specific closure stan-
5 dard of the constitutional and statutory
6 provisions requires this Court to balance
7 the competing constitutional interests in
8 the context of the facts of each case, to
9 determine whether the demands of individual
10 privacy clearly exceed the merits of public
11 disclosure. Under this standard, the right
12 to know *may* outweigh the right of individual
13 privacy, depending on the facts.

14 Before balancing these interests,
15 however, it must be determined more
16 precisely what interests are at stake. This
17 determination includes consideration of
18 various facets of the public interest and is
19 required by the language of the right to
20 know provision, which calls for a balancing
21 of the "demands of individual privacy" and
22 the "merits of disclosure."

23 Missoulia v. Board of Regents, 207 Mont. 513, 529, 675 P.2d
24 962, 971 (1984).

25 Here, the interest at stake is proprietary geological
information. In Mountain States Tel. and Tel. Co. v. Department
of Pub. Serv. Regulation, 194 Mont. 277, 634 P.2d 181 (1981),
the court held that corporate trade secrets are entitled to
constitutional protection. The court then applied the balancing
test to determine under what conditions trade secrets could be
publicly disclosed.

 In Belth vs. Bennett, 227 Mont. 341, 740 P.2d 638
(1987), the court upheld the constitutionality of Section 33-1-

1 412(5) which provides that the commissioner of insurance "may
2 withhold from public inspection any examination or investigation
3 report for so long as he deems such withholding to be necessary
4 for the protection of the person examined against unwarranted
5 injury or to be in the public interest." The court found that
6 the statute is an alternative expression of the constitutional
7 privacy exception found in Article II, Section 9, of the Consti-
8 tution, and that the commissioner could only invoke the statute
9 when the demand of individual privacy clearly exceeded the
10 merits of public disclosure. The court went on to note that the
11 statute authorizes the commissioner to make an initial decision
12 as to whether the privacy rights outweigh the need for public
13 disclosure. Belth at 346, 740 P.2d at 641.

14 In this case Plaintiffs are not seeking proprietary
15 geological information. DSL's files, however, contain other
16 information which is not proprietary geological information.
17 The file on the Montanore project, one of those requested by
18 Jensen, does not contain any proprietary information.

19 Unlike the statute at issue in Belth, Section 82-4-
20 306, MCA, does not authorize DSL to make an initial determina-
21 tion of whether the privacy rights of the applicant outweigh the
22 need for public disclosure. Rather, the statute requires DSL
23 keep all information confidential unless the applicant gives DSL
24 a waiver. This is in direct conflict with Article II, Section
25

1 9, and the cases which have interpreted it.

2 DSL argues that the legislature has performed the
3 required constitutional balancing test. The Court disagrees for
4 a number of reasons. First, the statute was enacted in 1971,
5 prior to the adoption of the Constitution. Second, the legisla-
6 tive history does not support a conclusion that the legislature
7 applied the balancing test. Third, Article II, Section 9, is a
8 self-executing provision. Allstate Ins. Co. v. City of
9 Billings, 239 Mont. 321, 780 P.2d 186 (1989). Fourth, in
10 applying the balancing test it is necessary to look at "the
11 competing constitutional interests in the context of the facts
12 of each case, to determine whether the demands of individual
13 privacy clearly exceed the merits of public disclosure."
14 Missoulain at 529, 675 P.2d at 971. Fifth, as the court noted
15 in Allstate, the constitutional provisions control the
16 legislature, not vice versa.

17 For the foregoing reasons, the Court concludes that
18 the blanket provision of Section 82-4-306, MCA, which requires
19 DSL to keep all information confidential, is unconstitutional on
20 its face. This does not mean that everything in DSL's files
21 should now be made available for public inspection. Proprietary
22 geological information is still entitled to protection in
23 accordance with Article II, Section 9. In determining whether
24 information in its files should be made available for public
25

1 inspection, DSL should apply the balancing test established by
2 the decisions of the Montana Supreme Court. If after applying
3 the test there is a dispute as to whether information should be
4 released, the affected parties can petition this Court for
5 appropriate relief.

6 The only remaining issue is whether mandamus is the
7 proper remedy. Mandamus lies only to compel the performance of
8 a clear legal duty. Section 27-26-102, MCA; State ex rel Swart
9 vs. Casne, 172 Mont. 302, 564 P.2d 983 (1977). The issue here
10 is whether there was a clear legal duty on the part of DSL to
11 make the requested files available to Jensen for inspection.
12 Under the facts of this case, the Court concludes that DSL did
13 not have a clear legal duty to make the files available for
14 inspection and therefore mandamus is not the proper remedy.

15 Section 82-4-306, MCA, specifically prohibited DSL
16 from releasing any information in the files. There is also a
17 strong presumption that a statute is constitutionally valid.
18 McClanathan v. Smith, 186 Mont. 56, 65, 606 P.2d 507, 512
19 (1980). Furthermore, "it is the duty of the courts to uphold
20 the constitutionality of legislative enactments if such can be
21 accomplished by reasonable construction." North Cent. Services,
22 Inc. v. Hafdahl, 191 Mont. 440, 444, 625 P.2d 56, 58 (1981).
23 Finally, the Court notes that failure to comply with the secrecy
24 provisions of Section 82-4-306, MCA, is punishable by a fine of
25

1 up to \$1,000. For these reasons, it was not unreasonable for
2 DSL to refuse Plaintiffs' request to review the files.

3 For these reasons,

4 IT IS ORDERED that the foregoing shall constitute the
5 declaratory judgment of this Court and that judgment should be
6 entered in favor of Plaintiffs in accordance with this
7 Memorandum and Order.

8 DATED this 25th day of September, 1992.

9
10
11 
District Court Judge

12 pc: Karl J. Englund
13 Tommy H. Butler
Joe Seifert

14 MEIC.m&o

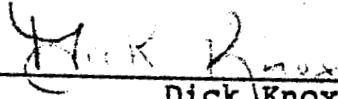
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HOUSE STANDING COMMITTEE REPORT

March 15, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that Senate Bill 104 (third reading copy -- blue) be concurred
in.

Signed: 
Dick Knox, Chair

Carried by: Rep. Feland

Committee Vote:
Yes , No .

5/15/92 1:30
581004SC.Hpf

SENATE BILL NO. 104

INTRODUCED BY GAGE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW GOVERNING THE POOLING AND SPACING OF OIL AND GAS WELLS; PROVIDING FOR TEMPORARY AND PERMANENT SPACING OR POOLING; PROVIDING FOR RECOVERY OF COSTS; AND AMENDING SECTIONS 82-11-201 AND 82-11-202, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-11-201, MCA, is amended to read:

"82-11-201. Establishment of well spacing units. (1) To prevent or to assist in preventing waste of oil or gas prohibited by this chapter, to avoid the drilling of unnecessary wells, or to protect correlative rights, the board, upon its own motion or upon application of an interested person, after hearing, may by order establish:

(a) temporary spacing units on a statewide basis or for defined areas within the state for oil, gas, or oil and gas wells drilled to varying depths; and

(b) permanent well spacing units for a discovered pool as--to-oil-wells-or-as-to-gas-wells-or-both, except in those pools which that, prior to April 1, 1953, have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing

stage of development. ~~Spacing units when established shall insofar as possible be of uniform size and shape for the entire pool.~~

(2) The size and the shape of temporary spacing units shall must be such--as--will--result--in--the--efficient--and--economic established to promote the orderly development of the--pool--as--a--whole,--and--the--size--shall unproven areas and must be uniform throughout the surface area that--can--be efficiently--drained--by--one--well and depths covered by the unit. A temporary spacing unit must remain in effect until superseded by an order issued by the board or until a permanent spacing unit is established.

(3) Permanent spacing units do not need to be uniform in size or shape but must result in the efficient and economic development of the pool as a whole. In establishing permanent spacing units, the acreage to be embraced within a unit and the shape of the unit must be determined by the board based upon evidence introduced at the hearing. The board may divide a pool into zones and establish spacing units for each zone if necessary for a purpose mentioned in subsection (1) or to facilitate production through the use of innovative drilling and completion methods. The spacing units within the zone may differ in size and shape from spacing units in any other zone but may not be smaller than the maximum area that can be efficiently and economically

1 drained by one well.

2 ~~†3†~~(4) ~~Subject---to---this---chapter,---the~~ An order
3 establishing temporary or permanent spacing units ~~shall~~
4 ~~direct--that-no-more-than~~ may permit only one well may to be
5 drilled and produced from the common source of supply on any
6 spacing unit, and ~~that the well shall must~~ be drilled at a
7 location authorized by the order, with such an exception as
8 may be reasonably necessary. ~~where---it---is---shown,~~ The
9 exception may be included if, upon application, notice, and
10 hearing, and the board finds that the spacing unit is
11 located on the edge of a pool or field and adjacent to a
12 producing unit or, for some other reason, that the
13 requirement to drill the well at the authorized location on
14 the spacing unit would be inequitable or unreasonable. The
15 board shall take action to offset any advantage that the
16 person securing the exception may have over other producers
17 by reason of drilling the well as an exception. The order
18 must include provisions to prevent production from the
19 spacing unit from being more than its just and equitable
20 share of the producible oil and gas in the pool.

21 ~~†4†~~(5) An order establishing temporary or permanent
22 spacing units for a pool ~~shall must~~ cover all lands then
23 determined or then believed to be underlaid by the pool and
24 may be modified after notice and hearing by the board from
25 ~~time--to--time~~ to include additional areas subsequently

1 determined to be underlaid by the pool.

2 ~~(6)~~ When found necessary for the prevention of waste,
3 an order establishing spacing units in a pool may be
4 modified after The board, upon application, notice, and
5 hearing, by the board to may increase or decrease the size
6 of a temporary or permanent spacing units ~~in the pool~~ unit
7 or to permit the drilling of additional wells in ~~the pool on~~
8 ~~a reasonably uniform plan~~ a spacing unit for a purpose
9 mentioned in subsection (1)."

10 **Section 2.** Section 82-11-202, MCA, is amended to read:

11 **"82-11-202. Pooling of interest within spacing unit.**
12 (1) (a) When two or more separately owned tracts are
13 embraced within a temporary or permanent spacing unit or
14 when there are separately owned interests in all or a part
15 of the spacing unit, then the persons owning those interests
16 may pool their interests for the development and operation
17 of the spacing unit.

18 (b) ~~in the absence of voluntary pooling within the~~
19 spacing unit, the The board, upon the application of an
20 interested person, may enter an order pooling all interests
21 in the permanent spacing unit for the development and
22 operation thereof of the permanent spacing unit and the
23 allocation of production if the applicant has made an
24 unsuccessful, good faith attempt to voluntarily pool the
25 interests within the permanent spacing unit. The applicant

1 must be a person who owns an interest in the oil or gas
 2 underlying the permanent spacing unit or who has drilled a
 3 well, proposes to drill a well, or proposes to conduct other
 4 operations on a well, including recompleting, deepening, or
 5 stimulation. The pooling order ~~shall~~ must be made after a
 6 hearing and ~~shall~~ must be upon terms and conditions that are
 7 just and reasonable and that afford to the owner of each
 8 tract or interest in the permanent spacing unit the
 9 opportunity to recover or receive without unnecessary
 10 expense ~~his~~ a just and equitable share of the oil or gas
 11 produced and saved from the spacing unit. Operations
 12 incident to the drilling of a well upon any portion of a
 13 permanent spacing unit covered by a pooling order ~~shall--be~~
 14 are considered, for all purposes, the conduct of the
 15 operations upon each separately owned tract in the spacing
 16 unit by the several owners ~~thereof~~ of the tracts. That
 17 portion of the production allocated to each tract included
 18 in a permanent spacing unit covered by a pooling order ~~shall~~
 19 must when produced be considered for all purposes to have
 20 been produced from the tract by a well drilled ~~thereon~~ on
 21 the tract.

22 (2) (a) ~~The--pooling--order--shall--provide---for---the~~
 23 ~~drilling-and-operating-of-a-well-on-the-spacing-unit-and-for~~
 24 ~~the--payment--of--the-cost--thereof--which-cost-may-include-a~~
 25 ~~reasonable-charge-for-supervision--handling--and-storage.~~ As

1 to each owner who refuses to pay ~~his~~ the owner's share of
 2 the costs of ~~drilling-and-operating-the-well~~ development or
 3 other operations referred to in subsection (1), the order
 4 ~~shall~~ must provide for payment of ~~his~~ the owner's share of
 5 the cost out of and only out of production from the well
 6 allocable to ~~his~~ the owner's interest in the permanent
 7 spacing unit, excluding royalty or other interest not
 8 obligated to pay any part of the cost ~~thereof~~, and excluding
 9 the royalty provided for in subsection (2)(c) ~~of--this~~
 10 section. If a well has not been drilled prior to the hearing
 11 on the application, the pooling order must provide for the
 12 drilling and operating of a well on the permanent spacing
 13 unit and for the payment of the cost of the well, which may
 14 include a reasonable charge for supervision, handling, and
 15 storage. If a dispute arises as to the cost, the board by
 16 subsequent order, after notice and hearing, shall determine
 17 the proper cost. The order may provide in substance that the
 18 owners who agree to share in the cost of drilling and
 19 operating the well are, unless they agree otherwise,
 20 entitled to receive, subject to royalty or similar
 21 obligations, all of the production of the well until they
 22 have recovered all of the costs out of the production, ~~7-and~~
 23 thereafter After all costs of drilling and operation are
 24 recovered, all of the owners in the permanent spacing unit
 25 are entitled to receive their respective shares of the

1 production of the well as their interest may appear after
2 deducting their respective shares of current operating
3 costs.

4 (b) If a well has been drilled prior to the hearing on
5 the application and an owner refuses, after written demand,
6 has failed or refused to pay his the owner's share of the
7 costs of drilling-and--operating--the--well development or
8 other operations referred to in subsection (1), or if a well
9 has not been drilled prior to the hearing on the application
10 and an owner refuses to agree to pay the owner's share of
11 drilling and completion costs, in addition to the costs
12 under subsection (2)(a), the order must include as cost
13 costs:

14 (i) 100% of the refusing owner's share of the cost of
15 newly acquired surface equipment beyond the wellhead
16 connections, including but not limited to stock tanks,
17 separators, treaters, pumping equipment, and piping, plus
18 100% of the refusing owner's share of the cost of operation
19 of the well commencing with first production and continuing
20 until the agreeing owners have recovered such the costs; and

21 (ii) 200% of the refusing owner's share of the costs and
22 expenses of staking, well site preparation, obtaining
23 rights-of-way, rigging up, drilling, reworking, deepening or
24 plugging back, testing, and completing the well, after
25 deducting any cash contributions received from the refusing

1 owners by the agreeing owners, and 200% of that portion of
2 the cost of equipment in the well, including the wellhead
3 connections.

4 (c) A refusing owner of an oil and gas interest in a
5 spacing unit which that is not subject to any lease or other
6 contract for development of oil and gas is considered to own
7 a landowner royalty equal to one-eighth of his the owner's
8 proportionate share of production from the well until such
9 time as the consenting owners recover the costs specified in
10 subsection (2)(b). Any interest in production from the
11 spacing unit to which the interest of the refusing owner may
12 be subject must be deducted from the royalty considered to
13 be owned by the refusing owner. After costs have been
14 recovered by the agreeing owners, the refusing owner owns
15 his the refusing owner's proportionate share of the well,
16 surface facilities, and production and is liable for further
17 costs as if he the refusing owner had originally agreed to
18 drilling of the well.

19 (d) The operator of a well under a pooling order in
20 which there is a refusing owner shall upon demand furnish
21 such the refusing owner with a monthly statement of all
22 costs incurred, together with the quantity of oil or gas
23 produced and the amount of proceeds realized from the sale
24 of production during the preceding month.

25 (e) If an owner of an oil and gas interest in a

1 temporary spacing unit refuses to agree to pay the owner's
2 share of the costs of drilling and operating a well drilled
3 within the unit and an application is filed for pooling of
4 the interests in the well in a permanent spacing unit, the
5 board shall, upon hearing the application for pooling of the
6 interests for the well, order that the parties who agreed to
7 share in the cost of drilling and operating the well prior
8 to commencement of the drilling operation recover out of the
9 refusing owner's share of the costs as provided in
10 subsections (2)(a) and (2)(b).

11 (3) (a) An owner is presumed to have refused to pay the
12 owner's share of costs if prior to the spud date of the
13 well, the owner fails to pay or agree in writing to promptly
14 pay the share of the costs after notice by the well operator
15 either:

16 (i) acknowledged in writing by the owner as received;

17 or

18 (ii) sent at least 30 days prior to the spud date of the
19 well to the owner by certified mail, addressed to the
20 owner's address of record in the office of the clerk and
21 recorder of the county where the well is to be drilled or to
22 the owner's address on file with the board.

23 (b) The notice must set forth the location of the well,
24 the projected depth and target formations, the anticipated
25 costs of drilling and completing the well, and the

1 anticipated spud date of the well."

-End-